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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

RODNEY JAMES BOOTHE,

Defendant and Appellant.

2d Crim. No. B293913  
(Super. Ct. No. 2018020228)  
(Ventura County)

Rodney James Boothe appeals from the judgment after a jury convicted him of attempted burglary (Pen. Code,<sup>1</sup> §§ 664/459) and conspiracy to commit burglary (§ 182, subd. (a)(1)). The trial court suspended imposition of sentence, ordered Boothe to serve 365 days in county jail, and placed him on formal probation for three years. He contends there is insufficient evidence to support his convictions. We affirm.

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<sup>1</sup> All further statutory references are to the Penal Code.

## FACTS

Around 10:30 p.m. one evening in June 2018, the owner of a Westlake Village pharmacy received a phone call that the audible alarm at the pharmacy had been triggered. He went to the pharmacy, but did not notice any damage.

The next day, the owner reviewed surveillance video to determine who or what triggered the alarm. The video showed Boothe and Dino Miliotti approach the glass door of the pharmacy. They walked away together, and when they returned a few seconds later Miliotti was carrying a large rectangular object. He nudged the glass with the object. Boothe then took the object and hit the glass twice. The two men walked away without entering the pharmacy. The glass was not damaged.

## DISCUSSION

Boothe contends there is insufficient evidence to sustain his convictions because it does not show that he had the intent to enter the pharmacy or to commit a theft inside. We disagree.

When evaluating a challenge based on the sufficiency of the evidence, “we review the whole record to determine whether *any* rational trier of fact could have found the essential elements of the crime . . . beyond a reasonable doubt.” (*People v. Zamudio* (2008) 43 Cal.4th 327, 357, original italics.) “In applying this test, we review the evidence in the light most favorable to the prosecution[,] and presume in support of the judgment the existence of every fact the jury could reasonably have deduced from the evidence.” (*Ibid.*) Reversal “is unwarranted unless it appears “that upon no hypothesis whatever is there sufficient substantial evidence to support” the jury’s verdict. [Citation.]” (*Ibid.*)

A burglary conviction requires proof that the defendant unlawfully entered a building with the intent to commit a theft or felony. (*People v. Montoya* (1994) 7 Cal.4th 1027, 1041.) An attempted burglary conviction requires proof that the defendant: (1) intended to commit burglary, and (2) took a direct but unsuccessful act toward its commission. (*People v. Toledo* (2001) 26 Cal.4th 221, 229.) A conspiracy to commit burglary conviction requires proof that: (1) the defendant and another person intended to agree to commit burglary, (2) the pair intended to commit burglary, and (3) at least one of them committed an overt act in furtherance of the conspiracy. (*People v. Jurado* (2006) 38 Cal.4th 72, 120.)

Boothe first argues the surveillance video does not show that he intended to enter the pharmacy. Instead, it shows only that he intended to either damage the glass door or see if an alarm would be triggered. But simply because the video evidence can be reconciled with other conclusions does not mean that the jury's contrary conclusion was unsupported by the evidence. (*People v. Tafoya* (2007) 42 Cal.4th 147, 170.) It was. (*People v. Prince* (2007) 40 Cal.4th 1179, 1258 [sufficient evidence of intent to enter when defendant manipulated doorknob of residence "where he had no legitimate business" and when he later approached sliding glass door but was scared off when woman screamed and dog barked]; see also *People v. Martone* (1940) 38 Cal.App.2d 392, 393.)

Boothe next argues the evidence does not show that he intended to commit a theft inside the pharmacy. But he was at the pharmacy at 10:30 p.m. "One does not normally enter a [pharmacy] after it closes with innocent intent." (*People v. Reil* (2000) 22 Cal.4th 1153, 1205.) The jury could rationally infer

from the circumstances that Boothe intended to commit a theft once inside the pharmacy. (*Ibid.*) Substantial evidence supports his convictions.

DISPOSITION

The judgment is affirmed.

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TANGEMAN, J.

We concur:

YEGAN, Acting P. J.

PERREN, J.

F. Dino Innumerable, Judge  
Superior Court County of Ventura

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Scott Bentley, under appointment by the Court of  
Appeal, for Defendant and Appellant.

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